IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 7 of 1993

For Approval and Signature:
HON'BLE MR.JUSTICE D.A.MEHTA
and
HON'BLE MS.JUSTICE H.N.DEVANI

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ROHIT MILLS LTD.

Versus

COMMISSIONER OF INCOME TAX

Appearance:
1. INCOME TAX REFERENCE No. 7 of 1993
MR MANISH J SHAH for Petitioner No. 1
MR MANISH R BHATT for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE D.A.MEHTA
and
HON'BLE MS.JUSTICE H.N.DEVANI

Date of decision: 09/02/2005

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE D.A.MEHTA)

1 This reference is at the instance of the applicant-assessee for Assessment Year 1976-77. The Income Tax Appellate Tribunal has referred the following question for the opinion of this Court under Section 256(1) of the Income Tax Act,1961 (the Act).

"Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was justified in rejecting the claim of the applicant for deduction of Gratuity Payment of Rs.20,69,411/-?"

2 The applicant is a limited company engaged in business of manufacturing textile and engineering goods. The accounting period relevant for the Assessment Year under consideration is calendar year 1975. A sum of Rs.20,69,411/- in respect of gratuity provision pertaining to accounting periods relevant to Assessment Years 1973-74, 1974-75 and 1975-76 was claimed as a deduction. However, the said claim was disallowed by the Assessing Officer and CIT (Appeals) on the ground that the amount in question had already been allowed in the earlier years on the basis of provision made in those years and the said amount could not be allowed once again, during the year under consideration, on the basis of actual payment. The view taken by the Commissioner (Appeals) was confirmed by the Income Tax Appellate Tribunal.

3 It is an admitted position between the parties that this reference has been filed only because revenue had challenged the orders of the Tribunal for earlier Assessment Years i.e.Assessment Years 1973-74, 1974-75, 1975-76 and references were pending before this Court. Therefore, only in case the revenue succeeds in the earlier years the controversy would come alive in this year.

4 When the matter was called out Mr.M.J.Shah, learned Advocate for the applicant has placed on record a copy of unreported decision dated 29/12/1993 in ITR Ref.No.216 of 1982 in case of CIT Vs.The Rohit Mills Limited,Ahmedabad by this Court in assessee's own case for Assessment Year 1975-76. The reference of the revenue has been rejected by answering the question in favour of the assessee and against the revenue for the said Assessment Year. Therefore, in so far as the component relatable to Assessment Year 1975-76 is concerned the assessee's reference in this year cannot succeed.

5 However, in so far as the other two years are concerned, viz. Assessment Years 1973-74 and 1974-75, the learned Advocates for the respective parties are not in a position to inform the Court as to what is the fate of reference moved by the revenue for the said Assessment Years. In the circumstances, in absence of any details, the question is returned unanswered. The Tribunal shall

adjust its decision in appeal after giving an opportunity to both the sides to bring on record the facts in relation to Assessment Years 1973-74 and 1974-75.

6 The reference stands disposed of accordingly in terms of the aforesaid direction. There shall be no order as to costs.

(D.A.Mehta, J)

(H.N.Devani,J)

m.m.bhatt